



August 5, 2016

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: NOTICE OF EX PARTE

WC Docket No. 16-143: *Business Data Services in an Internet Protocol Environment*

WC Docket No. 15-247: *Investigation of Certain Price Cap Local Exchange Carrier
Business Data Services Tariff Pricing Plans*

WC Docket No. 05-25: *Special Access for Price Cap Local Exchange Carriers*

RM-10593: *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent
Local Exchange Carrier Rates for Interstate Special Access Services*

Dear Ms. Dortch:

On August 3, 2016, Tim Donovan, Elizabeth Barket and I (via telephone) met with Travis Litman, Wireline Legal Advisor to Commissioner Rosenworcel, on behalf of Competitive Carriers Association (“CCA”). Brian Gelfand, General Manager of Blue Wireless, also attended the meeting. CCA and Blue Wireless discussed CCA’s proposal for reforming the business data services (“BDS”) marketplace to facilitate next-generation network deployment. Blue Wireless described how market power abuses by incumbent BDS providers impact Blue Wireless’s bottom line expenses, and how anticompetitive backhaul rates and contract terms may frustrate Blue Wireless’s ability to make a business case for deploying 5G networks.

CCA explained that the inability to purchase competitively-priced wireless backhaul will have a significant impact on the country’s wireless future. In the current marketplace, competitive carriers are often forced to pay supracompetitive prices for backhaul, often to affiliates of their largest wireless rivals. As carriers move toward next generation technologies including 5G, the availability of affordable backhaul will play a large role in determining whether wireless carriers can meet wireless usage and network demands and whether rural and regional carriers will be able to provide the benefits of high-speed networks to rural areas where, as the record reflects, competition among BDS providers is especially scarce.

The Commission should, therefore, adopt a forward-looking remedy for the BDS marketplace that will remain relevant as advanced wireless services demand increasingly higher speeds. While many rural and regional providers continue to rely, in part, on legacy backhaul services like DS1s and DS3s, access to Ethernet backhaul is a necessity for carriers providing or planning to provide advanced wireless services. Accordingly, the Commission’s new BDS

framework must include meaningful pricing remedies in uncompetitive markets for high-capacity Ethernet backhaul services to protect future 5G deployment, and competitive wireless networks and innovation. The Commission should adopt a presumption that BDS at or below 50 Mbps (or 100 Mbps) is not competitive. For markets above that threshold—and, therefore, not subject to the presumption—the Commission should administer a competitive market test (a “CMT”) that will determine whether each market for BDS, measured by census block, is competitive based on the number of BDS providers present. A census block with four or more BDS providers with a connection in the census block should be deemed competitive, while census blocks with three or fewer providers with a connection in the census block should be deemed not competitive. For any market determined to be not competitive, based on either a presumption or a CMT, TDM-based BDS should be subject to a new price cap regime that incorporates both a one-time and annual reduction while IP-based BDS should be subject to a safe harbor benchmark rate. If a BDS provider in an uncompetitive market offers IP-based BDS at a price within the safe harbor, the purchaser should bear the burden of challenging the rate; the opposite would be true in the event IP-based BDS is offered above the safe harbor benchmark rate. CCA explained that allocating the burdens in this fashion, and providing a dispute mechanism outside the Section 208 process,¹ is warranted given the market power abuses proved out by the record and the clarity that would be afforded by a safe harbor.

Blue Wireless discussed how backhaul costs represent a large percentage of their network operating expenses, and how these costs will grow increasingly burdensome as Blue Wireless deploys more advanced network infrastructure, and continues to expand their coverage. This is especially relevant with respect to Ethernet-based backhaul, as, for Blue Wireless, providing 4G coverage today demands a high-capacity Ethernet circuit above 50 Mbps. Blue Wireless provided an overview of their current backhaul use and needs. Because purchasing backhaul from an ILEC provider often means agreeing to terms seemingly designed to garner a certain bottom line profit, unrelated to the carrier’s needs, Blue Wireless purchases backhaul from a CLEC whenever possible. Unfortunately, Blue Wireless noted, working with a CLEC is not often an option as many areas in their coverage footprint are rural and served by only the ILEC. Blue Wireless stressed the importance of backhaul pricing to their overall business plan and expressed concern that a framework that does not regulate backhaul at speeds high will not provide a long-term solution to the anticompetitive issues that impact the BDS marketplace today. Specifically, Blue Wireless stated a business case for 5G would be extremely difficult, even though consumer demand is high, if backhaul rates remain undisciplined.

CCA provided a brief overview of a study conducted by Dr. Raul Katz, an economist and telecommunications expert, which examines the impact of current BDS marketplace dynamics on innovation, investment and competition within the wireless carrier community. CCA will file the study with our Reply Comments in the relevant dockets listed above. Dr. Katz’s conclusions reflect the day-to-day realities faced by many competitive carriers who purchase BDS from third parties: high backhaul drain resources away from network development, impair carriers’ ability to meet consumer demand, and will slow migration to 5G networks.

CCA urged the Commission to adopt its two-tiered proposal, which represents a reasonable approach to correcting market power abuses in the BDS marketplace and will serve to “future-

¹ 47 U.S.C. § 208.

proof” the outcome of this proceeding and ensure the Commission meets its 5G goals. This letter is being filed electronically, in accordance with Section 1.1206(b), for inclusion in the record in the above-referenced proceedings.

Respectfully submitted,

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EVP & General Counsel

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cc: Travis Litman